

DOCKET FILE COPY ORIGINAL **COPY**

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

RECEIVED
APR 27 1999
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Implementation of the Local Competition)
Provisions in the Telecommunications Act)
of 1996)

CC Docket No. 96-98

Inter-Carrier Compensation)
for ISP-Bound Traffic)

CC Docket No. 99-68

To: The Commission)

REPLY COMMENTS OF AIRTOUCH PAGING

Mark Stachiw, Esquire
AirTouch Paging
Three Forest Plaza
12221 Merit Drive, Suite 910
Dallas, TX 75251-2243
(972) 860-3212

April 27, 1999

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

In the Matter of)	
)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996)	CC Docket No. 96-98
)	
)	
Inter-Carrier Compensation for ISP-Bound Traffic)	CC Docket No. 99-68
)	
)	
To: The Commission)	

REPLY COMMENTS OF AIRTOUCH PAGING

AirTouch Paging ("AirTouch") hereby submits its reply comments on the *Notice of Proposed Rulemaking* released in the above-captioned proceeding.^{1/} The following is respectfully shown:

**The Comments Demonstrate the Importance of
Preserving and Extending Section 252(i) Rights**

The AirTouch comments in this proceeding set forth its view that the most favored nation ("MFN") rights in Section 252(i) are among the most important created by the 1996 Act.^{2/} AirTouch also demonstrated that many LECs are not willingly embracing

^{1/} FCC 99-38, released February 26, 1999.

^{2/} AirTouch Comments, Section II.

their obligations under this important statutory section.^{3/} The comments of several other parties in this proceeding echo the views of AirTouch. PCIA properly points out that Section 252(i) represents a critical tool in promoting non-discriminatory agreements, and urges the Commission to affirm requesting carrier's broad rights under this provision.^{4/} MCI urges the Commission to avoid placing artificial limitations on the exercise of MFN rights because of the importance of these protections in fostering a competitive marketplace.^{5/} ALTS points out specific examples where ILECs are not complying with the mandate of Section 252(i).^{6/}

The most compelling evidence of the need to reaffirm and clarify Section 252(i) rights comes from reading the comments of the LECs themselves. For the most part, the incumbent LECs seek in their comments to narrowly construe their MFN obligations, and urge the Commission to place limitations on the ability of requesting carriers to invoke Section 252(i). For example, GTE urges the Commission to prevent a requesting carrier from opting into another carrier's agreement during the voluntary renegotiation period at the end of the initial contract term. GTE comments, p. 26. This proposal, if adopted, would effectively gut Section 252(i). AirTouch's experience indicates that

^{3/} AirTouch Comments, Section III B.

^{4/} Comments of the Personal Communications Industry Association at Section III.

^{5/} Comments of MCI, p. 21.

^{6/} Comments of the Association for Local Telecommunications Services at p. 20.

interconnection contracts can have renegotiation periods that run for 135 to 160 days prior to the expiration or termination of the agreement (so that the end of the initial term does not arrive until the arbitration window under Section 252(b)(1) of the Act has opened). Obviously, a restriction on the exercise of Section 252(i) rights during a renegotiation period of this duration would greatly inhibit the benefit of the statutory MFN right.

Notably, the simple mechanics of the Section 252(i) request process can cause a requesting carrier, even one who is exercising great diligence, to lose considerable time at the front end of the term of an adopted agreement. The process of identifying approved agreements, analyzing their provisions to ascertain whether there are terms worthy of being adopted, initiating a formal Section 252(i) request and concluding a Section 252(i) agreement, can take considerable time.^{7/} If time at the beginning of the adopted agreement is lost in this manner, and the ability to opt into an agreement at the end of a term is lost as a result of GTE's renegotiation period blackout, the remaining Section 252(i) rights become mere shadows of the protections Congress and the FCC were seeking to erect.

In sum, the Commission should adopt the approach recommended by AirTouch and others by strongly reaffirming the Section 252(i) rights of requesting carriers, and

^{7/} In AirTouch's experience, many LECs erect additional hurdles to be overcome during the 252(i) process, including the negotiation of a Non-Disclosure agreement. In some cases, just getting the attention of the LEC can take weeks.

offering guidance to assure that LECs do not succeed in their efforts to frustrate other carriers who are seeking to exercise those rights.

II. The Concerns Expressed About the "Daisy Chain" Effect of Section 252(i) are Ill-Founded

Several commenters recommend that the Commission limit the ability of a requesting carrier to invoke Section 252(i) by ruling that such a carrier only is entitled to an agreement extending for the remaining term of the base agreement which is being adopted. The primary reason offered for this proposed restriction is that otherwise a series of subsequent requesters could create a "daisy chain" of successive agreements that could conceivably extend the original agreement in perpetuity. See, e.g., Comments of Ameritech, p. 25 (allowing a subsequent agreement to extend beyond the terminal date of the original agreement raises a risk of a single agreement being extended in "perpetuity"); Comments of GTE, p. 23 (describing the "daisy chain"); Comments of SBC, p. 32 (expressing concerns about "perpetual agreements"); Comments of the PUC of Texas, p. 8-9 (describing a never ending "loop of successive MFNs"); Comments of US West, p. 10 (expressing concern that a single contract will be extended "indefinitely").

These expressed concerns are misplaced. As was pointed out in detail in the AirTouch Comments, the statutory scheme, properly construed, does not present this dilemma. See AirTouch Comments, p. 5-6. Section 252(i) expressly provides that MFN rights only apply to agreements that have been approved by state commissions pursuant to Section 252 of the Act. Section 252(e) in turn only requires that agreements be filed

with state commissions for approval if they are arrived at by negotiation (i.e. those entered pursuant to the procedures specified in Section 252(a)) or by arbitration (i.e. those entered pursuant to the procedures specified in Section 252(b)). There is no requirement that agreements adopted pursuant to Section 252(i) be filed and approved by state commissions. Thus, a follow-on agreement, since it would not be approved pursuant to Section 252,^{8/} could never become the basis of a subsequent 252(i) request, and no “daisy chain” exists.^{9/}

With this proper understanding, the Commission should avoid placing preconceived restrictions on the term of an agreement adopted pursuant Section 252(i). Rather, the Commission should accord a requesting carrier an agreement term that allows it to enjoy the same economic benefit, including duration of the agreement, as was enjoyed by the original party.

III. Ameritech’s Reading of Section 252(i) Must be Rejected

The Ameritech Comments take what can only be viewed as a radical view of Section 252(i). According to Ameritech, the rates that are paid pursuant to a reciprocal

^{8/} Some states may have local rules which require the filing of these agreements (e.g. General Order 96-A in California), but that filing requirement is not pursuant to Section 252; thus, it would not create additional opportunities for a daisy chain.

^{9/} MCI points out some of the methods LECs will be able to use to completely eviscerate 252(i) rights if the term limitation is adopted. MCI Comments, pp. 21-22. Only AirTouch’s view that the agreement must remain available during its initial term and during any extended term will eliminate these problems.

compensation agreement are not an "interconnection, service or network element" to which MFN rights apply. Ameritech Comments, Section II D.

This Ameritech view clearly is incorrect from a statutory reading and as a matter of public policy. As the Commission clearly articulated in its Local Competition First Report, Section 252(i) means that a carrier may obtain access "**at the same rates**, term and conditions as contained in an approved agreement". 11 FCC Rcd 15499, para. 1314 (1996) (emphasis added). This explicit reference to the entitlement to an agreement "upon the same rates" is included in Section 51.809(a) of the FCC rules. Notably, this "pick and choose" rule was just upheld by the U.S. Supreme Court, which expressly quoted the FCC's requirement that agreements be offered "upon the same rates, terms and conditions". AT&T Corp. V. Iowa Utilities Board, 119 S.Ct. 721 at Section IV (1999). Under these circumstances, there is absolutely no basis for Ameritech to argue that reciprocal compensation rates are not subject to a Section 252(i) request.

Ameritech seeks to buttress the case for excluding compensation rates from MFN treatment by arguing that rates are intended to be cost-based and that it would be unfair to allow a requesting carrier to adopt rates from an agreement of another carrier which had a different cost structure. Ameritech Comments, pp. 24-25. This argument fails to recognize a basic premise of the TELRIC cost model that the FCC and most state commissions have endorsed. The approved rate is intended to reflect not the historical or actual cost of a particular carrier, but rather the idealized costs of an efficient, least-cost carrier. Properly applied, this means that two carriers who have different actual cost structures should have roughly equivalent TELRIC costs for comparable services. Thus,

allowing a subsequent carrier to opt into a previously-approved agreement reflecting
TELRIC rates should not result in the rate anomaly cited by Ameritech.

Respectfully submitted,

AIRTOUCH PAGING

By: Mark A. Stachiw (kw)

Mark A. Stachiw, Esquire

AirTouch Paging

Three Forest Plaza

12221 Merit Drive; Suite 910

Dallas, TX 75251-2243

Tel: (972) 860-3212

Fax: (972) 860-3552

Its Attorney

April 27, 1999

CERTIFICATE OF SERVICE

I, Shandila Collins, do hereby certify that I have on this 27th day of April, 1999, caused true and correct copies of the foregoing REPLY COMMENTS OF AIRTOUCH PAGING to be sent by first-class United States mail, postage prepaid, or by hand delivery to the following:

Gary Phillips
Counsel for Ameritech
1401 H Street, N.W., Suite 1020
Washington, D.C. 20005

William Page Montgomery
Montgomery Consulting
2903 Alta Laguna Blvd.
Laguna Beach, CA 92651

Emily M. Williams
ALTS
888 17th Street, N.W., Suite 900
Washington, D.C. 20006

David L. Lawson
James P. Young
Daniel Meron
Rudolph M. Kammerer
Sidley & Austin
1722 Eye Street, N.W.
Washington, D.C. 20006

Mark C. Rosenblum
Stephen C. Garavito
AT&T Corp.
Room 325G1
295 North Maple Avenue
Basking Ridge, NJ 07920

Carol Ann Bischoff
Terry Monroe
The Competitive Telecommunications
Association
1900 M Street, N.W., Suite 800
Washington, D.C. 20036

Robert J. Aamoth
Steven A. Augustino
John J. Heitmann
Kelley Drye & Warren LLP
1200 19th Street, N.W.
Fifth Floor
Washington, D.C. 20036

Cynthia B. Miller
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Richard Metzger
Focal Communications Corporation
1120 Vermont Avenue, N.W.
Terrace Level
Washington, D.C. 20005

Richard M. Rindler
Patrick J. Donovan
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, D.C. 20007

Thomas R. Parker
John F. Raposa
GTE Service Corporation
600 Hidden Ridge
HQE03J27
Irving, TX 75083

Gail L. Polivy
GTE Service Corporation
1850 M Street, N.W., Suite 1200
Washington, D.C. 20036

Barry Pineles
GST Telecom Inc.
4001 Main Street
Vancouver, WA 98663

Richard M. Rindler
Michael L. Shor
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, D.C. 20007

Richard S. Whitt
1801 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Robert M. Lynch
Roger K. Toppins
Michael J. Zpevak
Kathleen E. Palter
One Bell Plaza, Room 3014
Dallas, TX 75202


Charles C. Hunter
Catherine M. Hannan
Hunter Communications Law Group
1620 I Street, N.W., Suite 701
Washington, D.C. 20006

Pat Wood, III
Judy Walsh
Brett A. Perlman
Public Utility Commission of Texas
1701 N. Congress Avenue
P.O. Box 13326
Austin, TX 78711-3326

Willam T. Lake
John H. Harwood II
Lynn R. Charytan
Jonathan J. Frankel
Wilmer, Cutler & Pickering
2445 M Street, N.W.
Washington, D.C. 20037

Robert B. McKenna
Jeffry A. Brueggeman
US WEST, Inc.
1020 19th Street, N.W.
Washington, D.C. 20036

Angela Giancarlo
Personal Communications
Industry Association
500 Montgomery Street
Suite 700
Alexandria, VA 22314-1561


Shandila Collins